

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SCANNED

Case No. 07-21376-CIV-COHN/WHITE
(03-20226-CR-COHN)

FABIAN LENNOX JOHNSON,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

THIS CAUSE is before the Court upon a Report and Recommendation [DE 16], submitted by United States Magistrate Judge Patrick A. White on October 31, 2007, regarding Movant Fabian Lennox Johnson's Motion to Vacate Pursuant to 28 U.S.C. § 2255, attacking his conviction and sentence entered pursuant to a guilty plea in Case No. 03-20226-CR-COHN. Pursuant to 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review of the record herein, including the Motion, the Report and Recommendation, and Movant's Response in Opposition [DE 17], and is otherwise fully advised in the premises.

In his Response, Mr. Johnson first argues that more extensive efforts to object to leading questions in Brantley's testimony at sentencing and better efforts to argue for psychological evaluation and polygraph testing of Brantley and Smith would have resulted in a different sentence. However, the record clearly shows that Mr. Johnson's counsel did make these objections and requests, and vigorously cross-examined both witnesses in an effort to show that they testified untruthfully. Accordingly, Mr. Johnson

can show no deficient performance on the part of his counsel, and these claims are without merit.

Mr. Johnson also objects in general terms to many of the other conclusions in the Report and Recommendation. The Court has considered these Objections, but finds them to be without merit, and adopts the reasoning and conclusions set out in the Report and Recommendation.

Finally, Mr. Johnson requests that the Court "hold his crack amendment issue in abeyance pending the retroactive amendment to be made in April, 2008, by the Sentencing Commission, which looks promising." In that regard, Mr. Johnson is advised that beginning on March 3, 2008, motions for reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) will be authorized.

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Report of Magistrate Judge Patrick A. White [DE 16] is **ADOPTED**.
2. Movant Fabian Lennox Johnson's Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. §2255 [DE 1] is **DENIED**.
3. Movant Fabian Lennox Johnson's request that the Court "hold his crack amendment issue in abeyance" is **DENIED**. However, Mr. Johnson is advised to file his Motion for Reduction of Sentence no earlier than March 3, 2008.
4. Any other pending motions are **DENIED as moot**. The Clerk of Court is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County,

Florida, on this 29th day of December, 2007.


JAMES J. COHN
United States District Judge

Copies provided to:

Counsel of record

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